IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.4560 of 2006

Date of decision: **26.09.2006.**

Avtar Singh

..... Petitioner.

Versus

Sarwan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. A.K. Sharma, Advocate
for the petitioner.

Mr. Des Raj Mahipal,Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging the order dated 25.08.2006, vide which the evidence of the defendant was closed by order.

A reading of the order would show that Avtar Singh, defendant, was present in person at 12.15 p.m. for his cross examination by learned counsel for the plaintiff. At that time he went to call his counsel and the case was passed over to be taken up at 2.00 p.m. after lunch.

After lunch at 2.00 p.m. counsel for the plaintiff was present but defendant Avtar Singh did not come present. Thereafter, the clerk of the counsel for the defendant came in the court and prayed for adjournment. He stated that the witness was present in court. However, the order records that he did not come present in spite of repeated calls. In these circumstances, the trial Court felt that the defendant was adopting dilatory tactics and rather than appearing in the court was watching the proceedings from outside the Court. Therefore the evidence of the defendant was closed by the impugned order.

Learned counsel for the defendant contends that after lunch, defendant may not have been present as a notice had been displayed on the board of Bar Association regarding the unfortunate death of father of Rakesh Bhatia. Advocate. Counsel for the petitioner had gone to attend the funeral and when he came back to the court, the order closing the evidence had been passed. Learned counsel further submits that if one effective opportunity is granted to him, defendant-Avtar Singh would be present for cross examination and he would also conclude his entire remaining evidence.

Learned counsel for the respondent-plaintiff however contends that the defendant is only trying to delay the proceedings in the suit for recovery. He states that no leniency should be shown to him in the present case. However, if at all opportunity is to be granted, it should be on payment of heavy costs.

After hearing counsel for the parties, I am of the opinion that the interest of justice requires that one effective opportunity be granted to the defendant to be present for cross examination and to lead his entire evidence in defence. The defendant would remain present on the next date of hearing before the trial Court for cross examination and thereafter, the trial Court would give him one effective opportunity to lead his entire evidence. This would be done on payment of Rs.4000/- as costs.

In view of the aforesaid findings, present revision petition is allowed and the order dated 25.08.2006 is set aside. The copy of this order be given dasti on payment of usual charges.

September 26.09.2006 **(P.S. PATWALIA)**
dinesh **JUDGE**